STATE OF VERMONT

HUMAN SERVICES BOARD

In re	)	Fair Hearing No. 19,431
	)	
Appeal of	)	

INTRODUCTION

The petitioner appeals a decision by the Department for Children and Families, Economic Services Division, (DCF) requiring her to pay over to it $2,405 in assets which are above the allowable resource limit for Medicaid Long-Term Care.

FINDINGS OF FACT

1. The facts in this matter are undisputed. The petitioner is an eighty-one-year-old woman who is a long-term care recipient in the Medicaid program. She is not competent to act for herself and her daughter became her guardian by order of a Vermont probate court in 2001.

2. In September of 2004, the petitioner sold her interest in a piece of property for $15,000. DCF allowed the petitioner to pay certain expenses and debts with the proceeds from the property sale. After these deductions were allowed, the petitioner still had $4,405.09 remaining.

3. DCF asked the petitioner to return the amount above the $2,000 Medicaid maximum resource limit, or $2,405.09 to DCF. If that amount were remitted, her Medicaid could continue without interruption.

4. The guardian-daughter appealed that request on behalf of her mother saying that she should be allowed to keep the $2,405.09 to cover future guardianship expenses. The guardian-daughter's average monthly court approved fee for the guardianship was $247.00 over a three year period from 2001 to 2004. The service provided under the guardianship is the time spent by the daughter in making medical decisions for her mother. The guardian-daughter estimates based on longevity tables that her mother can expect to live for a little over eight more years. Based upon her past billing, the guardian-daughter expects that she will incur future fees far in excess of the $2,405.09 during her mother's lifetime. If her mother should die sooner, she has offered to refund the amount remaining to DCF.

5. The guardian-daughter concedes that guardianship services are available to her mother at no cost through the office of the public guardian but argues that this would still be an expense to the state.

ORDER

The decision of DCF that the petitioner is liable to pay over $2,405.09 to DCF is affirmed.

REASONS

Under rules promulgated by DCF, "resources are available cash or other property owned by individuals and available for their support and maintenance." M230. A single person holding more than $2,000 in countable resources is not eligible for the Medicaid program until such time as that excess resource is used for eligible expenses. M 230, P-2420C1. The rules further state that "all resources . . . must be counted except those that are specifically excluded [under the regulations at M232]." M230. The listed resource exclusions do not include prepaid guardianship fees or prepaid medical expenses. M232.

The guardian-daughter argues that the petitioner needs a guardian and that excluding all reasonable future expenses for that guardian is a "logical approach" for DCF to take. Although the petitioner may be right that this is one logical approach, it is not the approach chosen by DCF in managing its Medicaid long-term care program. Unless the petitioner can advance a legal reason as to why the approach used by DCF

is not permitted, the Board cannot overturn its decision, even if the Board may disagree with it. 3 V.S.A. 3091(d), Fair Hearing Rule 17.

In an attempt to show that this approach is legally impermissible, the petitioner relies heavily on a case decided by the Supreme Judicial Court of Massachusetts interpreting that state's Medicaid rules. Rudow v. Commissioner of the Division of Medical Assistance 429 Mass. 218 (1999). The Court interpreted Massachusetts' rules which allow "medical expense" deductions from monthly income to include payments to court-appointed guardians when recipients had no other way to access medical care.

The petitioner's reliance on that case to support her argument here is without merit for several reasons. First, the court does not address the issue of deducting future guardianship payments from excess resources, which is the situation before this Board. Furthermore, the Vermont resource deduction rule does not include a deduction for "medical expenses" as does the Massachusetts income deduction rule interpreted by the Massachusetts court, making the applicability of this ruling to the situation before the Board even more attenuated. Finally, the case cited by the petitioner did not involve guardianship services which were

provided by immediate family members[1], a fact which could have made a difference in that court's ruling and is ample ground to distinguish that case from this one before the Board.

The petitioner has not yet asked DCF to deduct her guardianship expenses from her ongoing income in determining her patient share. She may still pursue that course but she should be aware that the Board has previously ruled that ongoing guardianship fees are not deductible from the patient share because they are not specified as deductible at M432 (then M414). Fair Hearing No. 18,009. Even if such expenses could be considered deductible as "medical expenses" (a term specifically defined in Vermont's regulations and which does not include guardianship expenses, M420-22), DCF is correct that payment for any medical care or services "furnished by an immediate relative of the beneficiary" (including a daughter) is prohibited by regulation and the Board has so ruled in a prior case. M152.1(F), Fair Hearing No. 18,975.

It must be noted that the income deduction issue is not presently before the Board and no binding ruling on that issue is intended in this decision. As DCF has shown that

[1] The closest relative referred to who acted as a guardian was a niece of one of the appellants. The others had guardians who were not related to them.

its request for payment of the excess resource money is supported by its valid regulation, the Board is bound to uphold its decision in this matter. 3 V.S.A. § 3091(d), Fair Hearing Rule 17.

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